

Historic, Archive Document

Do not assume content reflects current scientific knowledge, policies, or practices.

UNITED STATES DEPARTMENT OF AGRICULTURE
BUREAU OF BIOLOGICAL SURVEY
Washington, D. C.

June 30, 1913

MEMORANDUM RELATING TO THE CONSTRUCTION OF FEDERAL GAME LAWS GOVERNING THE TRANSPORTATION AND IMPORTATION OF WILD BIRDS---NATIVE AND FOREIGN.

Section 2 of the Treaty Act prohibits the shipment, transportation, etc., of any migratory bird or part thereof, including the plumage, except as specifically permitted by regulations adopted by the Secretary of Agriculture.

Section 4 of the Act prohibits the interstate shipment, transportation, etc., of any bird (migratory or non-migratory) or part thereof contrary to the laws of the State in which it was captured, killed, or taken or from which it was shipped, transported, or carried, and the importation of any birds, etc., captured, killed, transported, etc., contrary to the laws of any Province of Canada. This Section supersedes the provisions of Section 242 of the Penal Code with respect to the interstate shipment and importation from Canada of wild birds killed or shipped in violation of the laws of the State or Province of Canada in which they were killed or from which they were shipped and adds new features covering the shipment by any means whatever and the shipment of live birds as well as the dead bodies.

A violation of Section 4 is predicated on a violation of a State law or law of a province of Canada. In other words there can be no violation of section 4 unless the acts committed were in violation of the laws of some State or of a Province of Canada.

The provisions of Section 2 must not be confused with the provisions of section 4. Section 2 relates solely to migratory birds and a violation of this section is not predicated on a violation of State law.

With respect to the interstate shipment of wild birds there remain of the Lacey Act only the following provisions:

(1) That part of Section 242 relating to the delivery to a common carrier for transportation, etc., of foreign animals or birds, the importation of which is prohibited by Section 241 of the Penal Code. Violations of this provision are not predicated on a violation of the law of any State or Province of Canada.

(2) The provisions of Section 243 relating to the marking of packages in which non-migratory birds or parts thereof are contained.

In this connection it may be said that a violation of Section 243 is not predicated on a violation of a State law and in the administration of the Lacey Act the Bureau has held that this section applies to the marking of packages containing dead bodies, plumage, or parts of all wild birds, native or foreign.

Marking packages containing migratory birds or parts thereof is now covered by Section 2 of the Treaty Act and the regulations.

(3) The provisions of Section 244, making it unlawful for the consignee to knowingly receive, or for a common carrier to knowingly carry or transport articles shipped or transported in violation of sections 241, 242, and 243 of the Penal Code.

The provisions of the Tariff Act of October 3, 1913, prohibit the importation of the plumage and skins of wild birds or parts thereof, including numidi, and the plumage of goura pigeons and birds of paradise. This law is enforced by the Officials of the Customs Department and has no relation to the provisions of Section 241 of the Penal Code relating to the importation of birds.

It therefore is apparent that in the absence of specific provisions of state law, clearly indicating that the plumage of goura pigeons, birds of paradise, and other birds of foreign species are included therein, the provisions of the Lacey Act and of Section 4 of the Treaty Act do not apply thereto, except the provisions of Section 243 which requires that all packages containing the dead bodies or plumage or parts thereof of all wild birds when shipped in interstate or foreign commerce shall be plainly and clearly marked as provided by said section.

